

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

PAUL J. McNALLY, TRUSTEE et als.

*Plaintiffs,*

v.

G. CONWAY, INC.,

*Defendant,*

and

BOWDOIN CONSTRUCTION CORP.,

*Reach-and-Apply Defendant,*

and

FLEET,

*Trustee.*

C.A. No. 05-10072 MEL

**AFFIDAVIT OF WAYNE M. GRENON**

I, Wayne M. Grenon, hereby depose and state upon my personal knowledge as follows:

- (1) I am the Controller of Bowdoin Construction Corp. ("Bowdoin"), the reach-and-apply defendant in this action.
- (2) Bowdoin is the general contractor for the construction of Super Stop & Shop Supermarket, Store #011, located in Revere, Massachusetts ("the Project") pursuant to a general contract between Bowdoin and Stop & Shop Supermarket Co. dated August 1, 2004.

(3) On March 25, 2004, Bowdoin entered into a subcontract with the defendant, G. Conway, Inc. ("Conway"), for the exterior sitework portion of the project for the subcontract price of \$2,775,800.00.

(4) On October 12, 2004, Bowdoin entered into a second subcontract with Conway, for the interior sitework portion of the Project, for the subcontract price of \$591,494.

(5) The status of the Exterior sitework subcontract is as follows:

Original subcontract price	\$ 2,775,800.00
Approved Change Orders	303,259.00
Revised subcontract price	3,079,059.00
Payments to date	2,679,968.99
Contract Balance Remaining	399,090.01

(6) The status of the interior sitework subcontract is as follows:

Original subcontract price	\$ 591,494.00
Approved Change Orders	6,551.00
Revised subcontract price	598,045.00
Payments to date	488,816.93
Contract Balance Remaining	109,288.07

(7) The work performed by Conway on the Project is actually being performed by numerous sub-subcontractors and material suppliers to Conway.

(8) Attached to this Affidavit as Exhibit "A" is a true copy of a document captioned "Aging & Cash Projection Report" dated May 4, 2005

furnished by Conway to Bowdoin. Exhibit "A" lists each of the sub-subcontractors and material suppliers to Conway relative to the Project and indicates that Conway owes its sub-subcontractors and suppliers relative to the Project, not including the plaintiffs, the sum of \$425,871.62.

(9) The Contract Balances Remaining under the Conway subcontracts are in the total amount of \$508,318.08. If Conway pays its sub-subcontractors and suppliers the amounts owed of \$425,871.62, there will be \$82,446.06 in Contract balances left to be paid. The cost to complete Conway's remaining work on the Project is in excess of that amount. There is not enough remaining to be paid to Conway under the two subcontracts to pay Conway's existing creditors on the project and to pay for the completion of the Project.

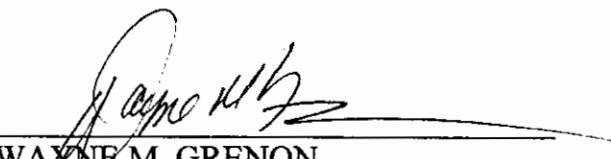
(10) If Bowdoin is unable to make payment to Conway or to Conway's sub-subcontractors and suppliers, there is a likelihood that they will cease performing work on the Project which will disrupt Bowdoin's performance of its obligations to Stop & Shop.

(11) If Bowdoin is unable to properly and timely perform the obligations of its general contract, Stop & Shop has the right to terminate Bowdoin's general contract.

(12) According to a letter dated May 9, 2005 from Don Christy, Field Auditor of the Massachusetts Laborers' Benefit Funds to Conway, a true copy of which is attached to this Affidavit as Exhibit "B," the "Net Amount Due" from Conway to the plaintiffs is \$75,523.48. According to Exhibit "B," the amount due

from Conway to the plaintiffs as a result of the work on the Project is only \$10,630.40. The balance of the amount sought by the plaintiffs of \$64,893.08 has nothing to do with the Stop & Shop Project or Bowdoin.

Signed under the pains and penalties of perjury this 18th day of May, 2005.



Wayne M. Grenon

0 : Page #

AGING  
AGING  
APAGSUM3.RPT

Aging & Cash Projection Report  
G. Conway, Inc.  
AGING DATE 05/04/2005

1. AS OF DATE: 05/04/2005

2. REPORT: AGING

3. REPORT ORDER: BY JOB / VENDOR

4. PRINT SUMMARY AGING REPORT (YES,NO): YES

AGING BY JOB / VENDOR THRU 12/9999

1. JOB RANGE : 2402 TO 2402

2. NEW PAGE FOR EACH JOB (YES,NO) NO

3. AGE ON: DUE DATE

4. AGE AS OF: 05/04/2005

5. ENTER AGING RANGES

1	TO	30	31	TO	60
61	TO	90	91	TO	999

Run On : May 04, 2005  
At :14:11:59  
As Of:05/04/2005

JOB INFORMATION		CURR TO 30	31 TO 60	61 TO 90	91 TO 99	TOTAL DUE
2402	SHOPS AT SUFFOLK DOWNS					
1015	ARACO SEWER & DRAIN SVC.	5,232.75	1,756.40			6,989.15
13036	MILLENNIUM POWER SWEEP					787.95
13099	MASS STATE POLICE TROOP					334.40
14029	NESC, INC					54,515.83
15003	ODONNELL SAND & GRAVEL					7,952.00
16020	PAVEL TRAFFIC LINE					8,598.33
16049	PUBLIC WORKS SUPPLY					15,373.27
18008	RENT ALL, INC.					934.50
18027	CITY OF REVERE POLICE DE					2,150.50
18040	REVERE POLICE DEPARTMENT					448.80
19066	SCITUATE/RAY PRECAST CON					2,059.05
2036	BILLERICA WINWATER WORKS					1,122.79
2296	BROX INDUSTRIES INC					238,117.34
23004	WATER WORKS SUPPLY CORP.					0.01
23025	WINTHROP POLICE					308.00
3053	CARUSO EQUIPMENT CO.					73,546.00
4023	DEERING MASON SUPPLY INC					7,783.47
7033	GARRITY ASPHALT RECLAIM					1,525.23

Run On :May 04, 2005  
At :14:11:59  
As Of :05/04/2005

Aging & Cash Projection Report

G. Conway, Inc.  
AGING DATE 05/04/2005

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AGING  
APAGSUM3.RPT

JOB INFORMATION		CURR TO 30	31 TO 60	61 TO 90	91 TO 99	TOTAL DUE
2402		8,414.59	1,756.40	3,773.80	411,926.83	425,871.62

RANGE TOTALS:

=====	=====	=====	=====
8,414.59	1,756.40	3,773.80	411,926.83
=====	=====	=====	425,871.62

\*\*\* End Of Report \*\*\*

BC  
JC  
RC

MASSACHUSETTS LABORERS' BENEFIT FUNDS  
14 NEW ENGLAND EXECUTIVE PARK-SUITE 200  
P.O. BOX 4000, BURLINGTON, MA 01803-0900  
TELEPHONE (781) 272-1000  
FAX (781) 272-2226  
1 (800) 342-3792

5/09/2005

BOB CONWAY  
G CONWAY INC  
P O BOX 273  
CHARLESTOWN, MA 02129 07255

DEAR BOB CONWAY,

→ OUR RECENT AUDIT OF YOUR LABORERS' PAYROLL RECORDS FOR THE PERIOD OF:  
01/2004-12/2004 REVEALED AN OUTSTANDING BALANCE OF: \$ 47,034.91. ←

IF APPLICABLE, ATTACHED PLEASE FIND AUDIT REMITTANCE REPORTS LISTING THE HOURS AND AMOUNTS DUE FOR EACH LABORER BY MONTH. THESE REPORTS MUST BE RETURNED WITH YOUR CHECK IN ORDER TO INSURE THAT PROPER CREDIT IS GIVEN TO EACH LABORER.

IN ADDITION, ANY PAST DUE AUDIT BALANCES, OUTSTANDING INTEREST, UNDERPAYMENTS AND OTHER FEES ARE LISTED BELOW AND ARE DUE AND PAYABLE AT THIS TIME.

<u>AUDIT PERIOD</u>	<u>AMOUNT DUE</u>	<u>PYMTS/ADJ RECV'D</u>	<u>BALANCE DUE</u>
01/2005-04/2005	24,212.85	.00	24,212.85
09/2004-12/2004	72,418.76	43,729.71	28,689.05
01/2004-08/2004	70,749.97	52,404.11	18,345.86

TOTAL HOUR CARD: .00

OUTSTANDING A/R: 4,275.72

AUDIT FEES: .00

LAWYERS FEES: .00

NET AMOUNT DUE: 75,523.48

## G Conway Job Breakdown

Job: Shops At Suffolk Downs

General Contractor: Bowdoin

Year: 2005

Rate:  \$15.10

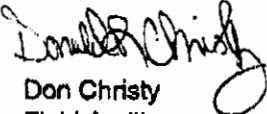
→ JMWU  
WIE 4/16/05

Laborer	Total	Jan	Feb	Mar	Apr
S.S. # 032-54-6426	439.5	90.5	112	146	91
Name Edward Raposo					
S.S. # 019-68-1480	98.5		2	96.5	
Name Pedro Fernandes					
S.S. # 030-64-2196	117		74	43	
Name Christopher Raposo					
S.S. # 011-56-2602	16			16	
Name Jose Ferreira					
S.S. # 030-64-2196	2			2	
Name Kevin Raposo					
Total	673				
Total \$	<u>\$10,162.30</u>				

I have determined the above balance due to the  
Massachusetts Laborer's Benefit Funds.

These figures were derived from G Conway's  
Certified Payrolls

If there are any questions please call me at (781) 272-1000x172.

  
Don Christy  
Field Auditor

## G Conway Job Breakdown

Job: Stop & Shop Revere, MA

General Contractor: Bowdoin

Year : 2005

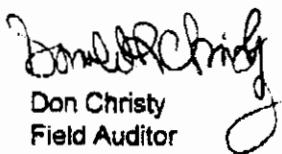
Rate: \$15.10

Laborer	Total	Jan	Feb	Mar	Apr
S.S. # 032-54-6426	21	13		8	
Name Edward Raposo					
S.S. # 019-68-1480	10			10	
Name Pedro Fernandes					
S.S. # 030-64-2196	0				
Name Christopher Raposo					
S.S. # 011-56-2602	0				
Name Jose Ferreira					
S.S. # 030-64-2198	0				
Name Kevin Raposo					
Total	31				
Total \$	<u>\$468.10</u>				

I have determined the above balance due to the  
Massachusetts Laborer's Benefit Funds.

These figures were derived from G Conway's  
Certified Payrolls

If there are any questions please call me at (781) 272-1000x172.

  
Don Christy  
Field Auditor